

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:20-cv-266-MOC**

**ROBERT E. STAFFORD, JR. on behalf)
of himself and all others similarly)
situated,)**

Plaintiff,)

vs.)

ORDER

BOJANGLES RESTAURANTS, INC.,)

Defendant.)

THIS MATTER comes before the Court on Defendant’s Motion to Dismiss Named and Opt-in Plaintiffs Pursuant to Rules 37 and 41, (Doc. No. 347). Plaintiffs filed a Response on January 13, 2023, and Defendant filed a Reply on January 20, 2023. (Doc. Nos. 354, 355).

I. BACKGROUND AND DISCUSSION

In a November 3, 2022, order compelling Plaintiffs to appear for deposition, this Court required Defendant Bojangles to identify, by November 14, 2022, all of the remaining named and opt-in plaintiffs it intended to depose, up to the maximum of sixty it is allotted. (Doc. No. 338 at 2). The Court then required Plaintiffs to inform Bojangles, by December 12, 2022, the dates between January 3 and January 31, 2023, on which each identified Plaintiff is available for deposition. (Id. at 2–3). In its order, the Court stated, in bold text: “**Named Plaintiffs and opt-in Plaintiffs are admonished that if they do not comply with this Order – if they do not provide available dates or fail to appear for their depositions – their claims will be subject to dismissal.**” (Id. at 3).

On November 14, Bojangles informed Plaintiffs of the nine named plaintiffs and 25 opt-in plaintiffs it intended to depose in order to reach its allotment of sixty depositions, 34 in all. (Def. Ex. A). Plaintiffs responded on December 12, providing a single date and time on which only 13 of the 34 individuals Bojangles identified was available to be deposed. (Def. Ex. B). After the Court's deadline, Plaintiffs added a fourteenth deponent. Plaintiffs' December 12 correspondence failed to provide any availability for the following 20 plaintiffs: Michelle Layton, Debra Call, Marquita Smith, Jennifer Wester, John Powell, Kathy Henderson, Jessica Allen, Michelle MacCallum, Kristin Rusiecki, Teresa Thornley, Bethany Brandys, Dora Rowland, Alexandra Carnevale, Melissa Nelson, Hallie Smith, Ronald Broady, Malik Thompson, Blair Murray, Paula Handler, and Janeka Covington.

Defendant asserts in its motion to dismiss that these individuals have failed to comply with the Court's order that they provide their availability for deposition between January 3 and January 31, 2023. Defendant further asserts that each of them has also failed to appear for at least one properly noticed deposition and that some have failed to comply with four or more deposition notices. Defendants contend that, having failed to appear for previously noticed depositions and to provide their availability to appear for deposition at any time during the remainder of the discovery period, the twenty named and opt-in plaintiffs have communicated their desire not to participate further in this case.

The Court agrees with Defendant that the failure to appear for deposition and to abide the Court's order warrants dismissal of the following named and opt-in Plaintiffs pursuant to Federal Rules of Civil Procedure 37(d), 37(b), and 41(b): Michelle Layton, Debra Call, Marquita Smith, Jennifer Wester, John Powell, Kathy Henderson, Jessica Allen, Michelle MacCallum, Kristin Rusiecki, Teresa Thornley, Bethany Brandys, Dora Rowland, Alexandra Carnevale, Melissa

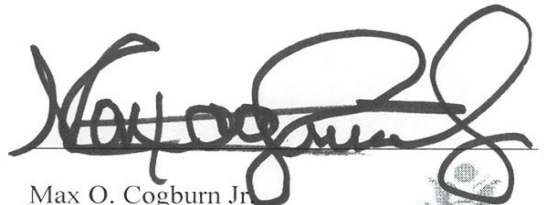
Nelson, Hallie Smith, Ronald Broady, Malik Thompson, Blair Murray, Paula Handler, and Janeka Covington. Furthermore, the dismissal is with prejudice.

II. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss Named and Opt-in Plaintiffs Pursuant to Rules 37 and 41, (Doc. No. 347) is **GRANTED** and the Opt-in Plaintiffs named in the motion to dismiss are dismissed with prejudice.

IT IS SO ORDERED.

Signed: February 1, 2023



Max O. Cogburn Jr.
United States District Judge